

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Request for Waiver by)	
)	
art in context)	File No. SLD-262426
New York, New York)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21
National Exchange Carrier Associations, Inc.)	

ORDER

Adopted: March 18, 2002

Released: March 19, 2002

By the Accounting Policy Division, Common Carrier Bureau:

1. The Accounting Policy Division has under consideration a Waiver Request filed by art in context (AIC), New York, New York, seeking waiver of the Commission's rules governing the schools and libraries universal service support mechanism.¹ AIC requests waiver of the filing deadline for Funding Year 4.² For the reasons set forth below, we deny AIC's Waiver Request.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³ In order to receive discounts on eligible services, the Commission's rules require that the applicant submit to the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) a completed FCC Form 470, in which the applicant sets forth its technological needs and the services for which it seeks discounts.⁴ Once the applicant has

¹ Letter from Charles SanClementi, Jr., art in context, to Federal Communications Commission, filed August 30, 2001 (Waiver Request).

² See Waiver Request. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Universal Service Administrative Company (Administrator) may seek review from the Commission. 47 C.F.R. § 54.719(c).

³ 47 C.F.R. §§ 54.501–54.503.

⁴ 47 C.F.R. § 54.504(b).

complied with the Commission's competitive bidding requirements and entered into an agreement for eligible services, it must file an FCC Form 471 application to notify the Administrator of the services that have been ordered, the carrier with whom the applicant has entered an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services.⁵ The Commission's rules require that the applicant file a completed FCC Form 471 by the filing window deadline to be considered pursuant to the funding priorities for in-window applicants.⁶ The last day of the filing window for Funding Year 4 was January 18, 2001.⁷

3. The record reveals that AIC filed its material outside the filing window. AIC's FCC Form 470 was posted in January 25, 2001, a week after the filing window closed for the FCC Form 471.⁸ AIC waited more than the required 28 days, and submitted the FCC Form 471.⁹ The certification completing the FCC Form 471 was postmarked July 25, 2001, six months after the filing window had closed.¹⁰

4. AIC admits it was late in submitting its FCC forms, but explains that a number of factors led to the late filing. First, AIC states that it was misled by information from SLD's website indicating that there was no deadline for the forms. AIC states that it looked on SLD's website and found the following language: "For tariffed [sic] telecommunications services or month-to-month contracts, the Form 470 can be filed at any time after July 1 of the year preceding the funding year for which you are applying ... as long as it is at least 28 days before you file your form 471."¹¹ AIC quotes SLD material further: "For contract services for which you are seeking a new contract for the coming funding year, you may file Form 470 whenever you wish to begin your procurement process, as long as it is at least 28 days before you file the Form 471."¹²

5. In addition, AIC notes that the employee filing the forms was ill.¹³ AIC explains that due to the information on the website and the employees limited capacity for accomplishing tasks due to treatment for the illness, AIC thought it could file its FCC Form 470 in January 2001.¹⁴ AIC also notes that limiting discounts for Internet access will "adversely affect over 6 million annual users."¹⁵ AIC requests waiver of the filing deadline.¹⁶

⁵ 47 C.F.R. § 54.504(c).

⁶ 47 C.F.R. §§ 54.504(c), 54.507(g).

⁷ SLD website, What's New Archives, (September 2000)
<<http://www.sl.universalservice.org/whatsnew/092000.asp#091800>>.

⁸ FCC Form 470, art in context, posted January 25, 2001.

⁹ FCC Form 471, art in context, filed July 25, 2001.

¹⁰ *Id.*

¹¹ Waiver Request at 1.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 1-2.

¹⁵ *Id.* at 3

6. AIC's Waiver Request can be granted only if waiving the deadline is supported by a showing of good cause.¹⁷ A deviation from a general rule is not permitted unless special circumstances warrant it and the deviation would better serve the public interest than strict adherence to the general rule.¹⁸ SLD reviews and processes thousands of applications each year, and therefore it is administratively necessary to place on the applicant responsibility for complying with rules and procedures.¹⁹ Timely submissions are needed because under the funding mechanism all requests for funding received within the initial filing deadline must be analyzed together in order to properly allocate funds.²⁰

7. In the past, we have denied waiver requests based upon an applicant's claim of its own misunderstanding of the rules.²¹ We have also denied waiver requests when applicants claimed that SLD staff people have provided incorrect advice about filing deadlines over the telephone.²² Furthermore, we have held that employee illness is not a sufficient basis for waiving rules.²³

8. AIC has failed to demonstrate special circumstances. The applicant ultimately bears the responsibility of completing the relevant forms and submitting them within the established deadline if the applicant wishes to be considered with other in-window applicants. While it is true that we have granted relief when the information provided on SLD's website led directly to a delay in filing, we have done this only in very limited circumstances and where

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¹⁶ *Id.*

¹⁷ See 47 C.F.R. § 1.3.

¹⁸ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (appeals court vacating a Commission decision to grant a waiver in a licensing issue, because it was arbitrary and capricious).

¹⁹ See *Request for Review by Anderson School Staatsburg, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610, para. 8 (Com. Car. Bur. 2000).

²⁰ See 47 C.F.R. § 54.507(g).

²¹ *Request for Review by St. Mary's Public Library, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. NEC.471.12-07-99.02000002, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 12936, para. 5 (Com. Car. Bur. 2001) (denying a waiver request to the extent its late filing was "due to misunderstanding of the program rules").

²² *Request for Review by Smackover Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-205330, CC Docket Nos. 96-45 and 97-21, Order, DA 01-2963, para. 8 (Com. Car. Bur. rel. December 19, 2001).

²³ See, e.g., *Request for Review by East Brunswick Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-276585, CC Docket Nos. 96-45 and 97-21, Order, DA 01-2520 (Com. Car. Bur. rel. October 31, 2001) (denying waiver request in case when employee handling forms resigned due to illness and new person did not know requirements). See also *Request for Review by New Orleans Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File Nos. SLD-201456, SLD-201463, SLD-201409, SLD-201449, SLD-201493, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd. 16653, para 18 (Com. Car. Bur. 2001) (denying waiver request in case where there were personnel disruptions and replacement of a sick employee skilled in the application process).

there was clear error directly responsible for the violation at issue.²⁴ That is not the case here. In the case at hand, there was nothing noted that would have prevented AIC from applying earlier in the year. Furthermore, this case does not involve any clear error on the part of SLD.²⁵ It is not an error to state that the FCC Form 470 can be filed at anytime as long as it is at least 28 days before the filing of the FCC Form 471.

9. Other information about the FCC Form 471 clearly indicates that it must be filed within a certain filing window.²⁶ In addition, the website for Funding Year 4 noted in its tips for filing the FCC Form 470 that it must be filed with enough time to achieve the 28-day period before filing of the FCC Form 471, “which must be postmarked no later than January 18... .”²⁷ We therefore find that AIC has failed to demonstrate special circumstances upon which its Waiver Request can be granted.

10. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the Waiver Request filed by art in context, New York, New York, on August 30, 2001 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert
Deputy Chief, Accounting Policy Division
Common Carrier Bureau

²⁴ See *Request for Review by West Las Vegas Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-196708, CC Docket Nos. 96-45 and 97-21, Order, DA 01-2330 (Com. Car. Bur. rel. October 10, 2001) (*West Las Vegas*) (the address of SLD listed on the website was incorrect and a courier returned the material to the applicant as undeliverable with that zip code).

²⁵ See *Id.*

²⁶ SLD website, Urgent Reminder of Filing Requirements for Year 4 (January 12, 2001) <<http://www.sl.universalservice.org/whatsnew/012001.asp#011201>>; FCC Form 471 Window Opens for Year 4 Applicants; New Filing Requirements Firmly Established (November 2, 2000) <<http://www.sl.universalservice.org/whatsnew/112000.asp#110200>>

²⁷ SLD website, Tip 2: File Your Form 470 Anytime During the Program Year, <http://www.sl.universalservice.org/reference/470Tips_Yr4.asp#1>.